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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/890,532 | 04/15/2002 | Kurt Burger | R.35252 | 3306 |

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EXAMINER

BEISNER, WILLIAM H

ART UNIT PAPER NUMBER

1744

DATE MAILED: 02/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/890,532

Applicant(s)

BURGER ET AL.

Examiner

William H. Beisner

Art Unit

1744

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


William H. Beisner
Primary Examiner
Art Unit: 1744

Continuation of 11. does NOT place the application in condition for allowance because: With respect to the rejection of claims 15-23, 29, 31 and 32 under 35 USC 103 over the reference of Fraser et al., Applicants argue (See pages 8-10 of the response filed 1/18/06) that the rejection is not proper because the Examiner has not addressed the step recited in claim 15 that plasma is selectively excited on the inside and outside of the vessel by separate control of the pressure inside the vessel and outside the vessel. Applicants stress that the crux of the instant invention resides in the control of the pressure in the interior of the chamber and the inside of the vessel independently of one another. In response, the Examiner is of the position that the rejection of the claims is proper because Applicants' comments are not commensurate in scope with the instant claim language. The Examiner maintains that the claim language of claim 15 is met by the rejection because the claim does not preclude that the gas is excited external to the chamber and because gas that is excited external to the chamber remains excited when introduced into the chamber and thus meets the instant claim language. Note when only the interior or exterior of the vessel is contacted by the excited plasma as recited in the rejection of record, the side of the vessel not being contacted would be at a pressure and/or conditions that would prevent excited plasma gas from contacting that surface. Furthermore, the surface that is being contacted with the excited plasma gas would inherently be at the required pressure. If not, the desired contact with the excited plasma would not be achieved. The Examiner stresses that the modification of the Fraser reference as stated in the rejection meets the instant claim limitation of selective excitation by separate control of the pressure inside and outside the vessel. When excited plasma flows through the interior of the vessel and not flow occurs on the exterior of the vessel, selective control of the pressure is employed so as to flow the excited plasma through the interior of the vessel while preventing the flow of excited plasma through the exterior of the vessel. With respect to the rejection of claims 24, 25, 27 and 28 under 35 USC 103 over the combination of the references of Fraser et al. and Hoeck or Schultze, Applicants argue (See pages 10-12 of the response dated 1/18/06) that none of Fraser et al., Hoeck and Schultze teaches or suggests the apparatus recited in claims 24 or 27. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). With respect to the rejection of claim 26 under 35 USC 103 over the combination of the references of Fraser et al. and Hoeck or Schultze taken further in view of Schroeder, Applicants argue (See pages 12-13 of the response dated 1/18/06) that none of Fraser et al., Hoeck, Schultze and Schroeder teaches or suggests the apparatus recited in claim 26. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986)..